

**VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY
ENFORCEMENT ACTION - ORDER by CONSENT
ISSUED to**

C&D Tree Service, Inc

**FOR
UNAUTHORIZED DISCHARGE**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15 for the purpose of resolving certain violations of the State Water Control Law and the applicable regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the terms used in this Consent Order have the meanings assigned to them in Va. Code § 62.1-44.2 *et seq.* and 10.1-1182 *et seq.*

SECTION C: Findings of Fact and Conclusions of Law

Responsible Party	C&D Tree Service	Inspection Date	10/25/2022		
Location of Discharge	Street Address or Lat/Long	1150 Downey Drive			
	City	Great Falls, Fairfax Co	VA	Zip Code	22158
Warning Letter(s)		Notice(s) of Violation	W2022-11-N-001		
Receiving Water Information	Piney Run (unmonitored), downstream water is Captain Hickory Run, which is impaired for recreation and aquatic life.				
Description of fish kill or impacts to the waterbody	pH of water body was lowered at discharge point				
The Responsible Party is a "person" within the meaning of Va. Code § 62.1-44.3.					
The Department has issued no permits or certificates to the Responsible Party for the discharge into state waters.					
Va. Code § 62.1-44.15(5a) states that a VPDES permit is a "certificate" under the statute.					
The receiving water is a surface water located wholly or partially within the Commonwealth and is a "state water" under State Water Control Law.					

Violation	Observations and Legal Requirements	Civil Charge		Subtotal
✓	Unauthorized discharge into state waters. Va. Code § 62.1-44.5(A) 9 VAC 25-31-50(B)	\$ 6,615.00	▼	\$ 6,615.00
		# of Occurrences	1	
	Failure to report the discharge into state waters to the Department or the coordinator of emergency services appointed for the political subdivision. Va. Code § 62.1-44.5(B) 9VAC25-31-50(B)	\$ 0.00	▼	\$ 0.00
		# of Occurrences		
Violation Component Civil Charge Subtotal		\$ 6,615.00		

Aggravating Factors		
	Additional Civil Charge Assessment	Subtotal
Degree of Culpability	0.00 ▼	\$ 0.00
Consent Order in another media Program within 36 months	0.00 ▼	\$ 0.00
Consent Order in the same media program within 36 months	0.00 ▼	\$ 0.00
Aggravating Factors Subtotal		\$ 0.00
Civil Charge Subtotal and Aggravating Factor Subtotal		\$ 6,615.00
Cooperativeness and Quick Settlement	-0.30	-\$ 1,984.50
Economic Benefit of Noncompliance	No	
In accordance with 62.1-44.15(8d), the Responsible Party's Ability to Pay was evaluated and it was determined that there is an ability to pay.	Yes	
Total Civil Charge		\$ 4,630.50
Based on the results of staff observations, the Department concludes that the Responsible Party has violated the Va. Code and Regulations as identified herein.		

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Department orders the Responsible Party, and the Responsible Party agrees to:

☐ Perform the actions described in Appendix A of this Order if this box is checked and

Pay the total civil charge of **\$ 4,630.50** in settlement of the violations cited in this Order in accordance with the following:

☒ Within 30 days of the effective date of the Order, or

☐ In accordance with the following payment schedule:

Due Date	Amount

If the Department fails to receive a civil charge payment pursuant to the schedule described above, the payment shall be deemed late. If any payment is late by 30 days or more, the entire remaining balance of the civil charge shall become immediately due and owing under this Order, and the Department may demand in writing full payment by Responsible Party. Within 15 days of receipt of such letter, Responsible Party shall pay the remaining balance of the civil charge. Any acceptance by the Department of a late payment or of any payment of less than the remaining balance shall not act as a waiver of the acceleration of the remaining balance under this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, VA 23218

The Responsible Party shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Responsible Party shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Department may modify, rewrite, or amend this Order with the consent of the Responsible Party for good cause shown by the Responsible Party, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Department or the Director from taking any action authorized by law,

including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.

3. For purposes of this Order and subsequent actions with respect to this Order only, the Responsible Party admits the jurisdictional allegations, and agrees not to contest, but neither admits nor denies, the findings of fact and conclusions of law in this Order.
4. The Responsible Party consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. The Responsible Party declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Department to modify, rewrite, amend, or enforce this Order.
6. Failure by the Responsible Party to comply with any of the terms of this Order shall constitute a violation of an order of the Department. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Department or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. The Responsible Party shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. The Responsible Party shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. The Responsible Party shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.

10. This Order shall become effective upon execution by both the Director or his designee and The Responsible Party. Nevertheless, the Responsible Party agrees to be bound by any compliance date which precedes the effective date of this Order.

11. This Order shall continue in effect until:

- a. The Director or his designee terminates the Order after the Responsible Party has completed all of the requirements of the Order;
- b. The Responsible Party petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
- c. The Director or Department terminates the Order in his or its sole discretion upon 30 days' written notice to Responsible Party.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve the Responsible Party from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by the Responsible Party and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.

13. The undersigned representative of the Responsible Party certifies that he or she is a responsible official or officer authorized to enter into the terms and conditions of this Order and to execute and legally bind the Responsible Party to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Responsible Party.

14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.

15. By its signature below, the Responsible Party voluntarily agrees to the issuance of this Order.

And it is so ORDERED.

[Signature Box]

[Date Box]

DEQ Signee Signature

Date

[Name Box]

[Title Box]

DEQ Signee Name

Title

I hereby certify that I am the Responsible Party or duly appointed representative/officer of the Responsible Party and acknowledge that there are no material facts in dispute with respect to the violations as identified in this consent order.

Signature Scott Nelson

Date 5-17-23

Name Scott Nelson

Title President